



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

MARK KIRBY, <i>individually and on behalf of</i>	§	
<i>the estate of Jane W. Kirby,</i>	§	
Plaintiff,	§	
	§	
vs.	§	Civil Action No.: 3:23-659-MGL
	§	
STATE OF SOUTH CAROLINA, SC STATE	§	
ACCIDENT FUND, HENRY D. MCMASTER,	§	
and AMY COFIELD,	§	
Defendants.	§	

**ORDER ADOPTING THE REPORT AND RECOMMENDATION,
GRANTING THE STATE AND MCMASTER’S MOTION TO DISMISS,
AND DISMISSING WITHOUT PREJUDICE THE CLAIMS AGAINST THEM**

Plaintiff Mark Kirby (Kirby), proceeding pro se, filed a complaint on behalf of himself and the estate of Jane W. Kirby against Defendants State of South Carolina (the State), South Carolina State Accident Fund, Henry C. McMaster (McMaster), and Amy Cofield, alleging claims under 42 U.S.C. § 1983. Because McMaster’s middle initial is “D,” the Clerk’s Office is directed to amend the caption accordingly.

This matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge recommending the Court grant the State and McMaster’s motion to dismiss. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the

Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on May 30, 2023. To date, Kirby has failed to file any objections.

“[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note). Moreover, a failure to object waives appellate review. *Wright v. Collins*, 766 F.2d 841, 845–46 (4th Cir. 1985).

After a thorough review of the Report and the record in this case under the standard set forth above, the Court adopts the Report and incorporates it herein. Therefore, it is the judgment of the Court the State and McMaster’s motion to dismiss is **GRANTED** and Kirby’s claims against them are **DISMISSED WITHOUT PREJUDICE**.

IT IS SO ORDERED.

Signed this 22nd day of June 2023, in Columbia, South Carolina.

s/ Mary Geiger Lewis _____
MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within thirty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.